Filed 7/19/19 Natl. Commercial Recovery, Inc. v. Park CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

NATIONAL COMMERCIAL RECOVERY, INC., Plaintiff and Respondent, v. CHRISTIAN PARK, Defendant and Appellant.	B285946 (Los Angeles County Super. Ct. No. BC535102)

APPEAL from an order of the Superior Court of Los Angeles County, Edward B. Moreton, Jr., Judge. Affirmed.

The Law Offices of George T. Kelly and George T. Kelly for Defendant and Appellant.

Glenn A. Besnyl for Plaintiff and Respondent.

Defendant and appellant Christian Park (Park) appeals an order denying his motion to vacate a default judgment obtained by plaintiff and respondent National Commercial Recovery, Inc. (National).[1]

We conclude the trial court properly determined that Park was duly served with the summons and complaint by substitute service at his business address at the office of CYR International, Inc. (CYR). Although Park contended he was merely an employee of CYR, and that CYR had terminated his employment before the date he purportedly was served at CYR's place of business, National presented evidence that Park was one of the two principals of CYR and that Park's involvement with CYR continued after the date that Park claimed he was discharged.

Therefore, the trial court's order refusing to vacate the default judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

On February 4, 2014, National filed a complaint against CYR, Park and Eunchan Lim (Lim), alleging the following four causes of action: (1) common count—open book account; (2) common count—goods sold and delivered; (3) account stated; and (4) violation of the Perishable Agricultural Commodities Act, 1930 (PACA) (7 U.S.C. § 499a et seq.), which regulates qualifying transactions in the produce industry. (*Tomatoes Extraordinaire, Inc. v. Berkley* (2013) 214 Cal.App.4th 317, 320 (*Tomatoes*).) The

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[1] An order denying a motion to vacate a default judgment is appealable as a postjudgment order. (Code Civ. Proc., § 904.1, subd. (a)(2); *Carr v. Kamins* (2007) 151 Cal.App.4th 929, 933.)

All statutory references are to the Code of Civil Procedure, unless otherwise specified.

complaint alleged that Park and Lim were principals of CYR, and that each of the defendants was an agent or alter ego of the other defendants. The gravamen of the complaint was that the defendants had purchased wholesale produce from National's assignor, ETR Merchandise Co. (ETR), defendants had become indebted to ETR in the net principal amount of $117,436.54 and had failed to pay said sum although demand had been made therefor, and that ETR had assigned its right to collect said sum to National.

National filed proofs of service showing that on February 20, 2014, all three defendants were served by substitute service by leaving copies with Esther Lee (Lee), an accountant authorized to accept service of process, at the CYR business address at 625 S. Palm Avenue in Alhambra, California, with copies mailed thereafter to the address where the papers were served. Defendants failed to answer the complaint, and on April 15, 2014, the clerk entered their default.

The matter proceeded to a default prove-up on December 15, 2014, at which time the trial court entered a default judgment against CYR, Park, and Lim, jointly and severally, in the principal sum of $117,436.54, plus prejudgment interest of $9,618.83, attorney fees of $1,000 pursuant to Civil Code section 1717.5 [attorney fees in an action on a contract based on a book account], and costs of $495, for a total amount of $128,550.37. National, the judgment creditor, recorded an abstract of judgment on February 2, 2015.

On August 30, 2017, more than two years and eight months after entry of default judgment, Park filed a motion to vacate the default judgment that had been entered against him. Park contended the judgment was void because the service of summons

was invalid, and therefore the judgment could be set aside at any time. In a supporting declaration, Park stated he had been employed by CYR, but was terminated on June 28, 2013, eight months before the substitute service on Lee. Further, he was not welcome at the company's premises after his termination, and Lee was not authorized to accept service of any documents on his behalf. Park also stated that he did not learn of the default judgment until he performed a check of his credit in late 2016.

In opposition, National presented evidence to controvert Park's claim that he was merely a former employee of CYR. National's opposition to Park's motion included the following: (1) CYR's license record from the United States Department of Agriculture (USDA), which listed Park, together with Lim, as CYR's "principals—owners, partners, officers, directors, members, and holders of more than 10% of its stock"; (2) CYR's application to the USDA for a PACA license, which listed Park as one of the two principals of CYR, with the title of "VP/CFO"; and (3) a vehicle registration record from the California Department of Motor Vehicles (DMV), showing that a CYR company van was registered to Park for the one-year period beginning August 20, 2013, which was months *after* the date that Park's employment purportedly was terminated.

On September 22, 2017, the matter came on for hearing. Park's motion to vacate the default judgment was heard, argued, and denied.[2] This timely appeal followed.

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[2] The trial court's order did not set forth the court's rationale, and the hearing was not reported. While a transcript of the hearing would have been helpful to understand the trial court's reasoning, it is not necessary here where our review is de novo and the appellate record includes the trial court's written

CONTENTIONS

Park contends the trial court erred in refusing to vacate the default judgment because (1) there was evidence that he was never served with the complaint; (2) the complaint failed to allege critical facts pursuant to PACA; (3) National lacked standing under PACA to sue Park; and (4) National failed to present sufficient evidence in support of the default prove-up to establish Park's liability under PACA.

DISCUSSION

1. *The trial court properly refused to set aside the default judgment against Park because National's substitute service of process upon Lee was effective to establish personal jurisdiction over Park.*

Park contends the trial court erred in denying his motion to vacate the default judgment because the judgment is void for lack of personal jurisdiction. The argument is unavailing.

We begin with the governing law. Principles of due process, including the need for personal jurisdiction to be established over a defendant, require that the applicable statutory procedures for service of process be satisfied. (*Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 858.) A default judgment entered against a defendant who was not served with process in compliance with those procedures is void (*ibid.*), and a void judgment is vulnerable to direct or collateral attack at any time. (*Strathvale Holdings v. E.B.H.* (2005) 126 Cal.App.4th 1241, 1249.) "Under section 473, subdivision (d), the court may set aside a default judgment which is valid on its face,

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order and all the evidentiary materials germane to Park's motion. (*Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 933.)

but void, as a matter of law, due to improper service." (*Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544.) When the defendant challenges the trial court's personal jurisdiction, the burden is on the plaintiff to prove that service of process was effective. (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413.)

We review de novo a trial court's legal determination as to whether a default judgment is void for lack of proper service of process. (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1200.) However, as in this case, where the evidence is in conflict, this court must defer to the trial court's factual determinations under the substantial evidence standard. (*Ramos v. Homeward Residential, Inc.* (2014) 223 Cal.App.4th 1434, 1441, fn. 5.) Where findings of fact are challenged, we consider whether they are supported by any substantial evidence, contradicted or uncontradicted. (*Pope v. Babic*k (2014) 229 Cal.App.4th 1238, 1245 (*Pope*).) "When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478–479.) We do not reweigh evidence, reassess the credibility of witnesses, or resolve conflicts in the evidence. (*Pope*, *supra*, 229 Cal.App.4th at pp. 1245—1246.)

Section 415.20 authorizes substitute service of process in lieu of personal delivery. It provides: "If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, . . . a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent

member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left." (§ 415.20, subd. (b).)

Under section 415.20, "an individual may be served by substitute service only after a good faith effort at personal service has first been made . . . . Two or three attempts to personally serve a defendant at a proper place ordinarily qualifies as ' "reasonable diligence." ' " (*American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 389.) Since the purpose of section 415.20 is to permit service to be completed upon a good faith attempt at physical service on a responsible person, service must be made upon a person whose relationship with the person to be served makes it more likely than not that they will deliver process to the named party. (*Hearn v. Howard*, *supra*, 177 Cal.App.4th at pp. 1202–1203.)

Here, National filed a proof of service from a registered process server, Sylvia Ruiz, in which she attested that on February 20, 2014, she left copies of the summons and complaint with Lee, an accountant, at Park's business address, and later mailed the documents to the same address, after two failed attempts to personally serve Park at the business address. "The filing of a proof of service creates a rebuttable presumption that the service was proper . . . if the proof of service complies with the applicable statutory requirements." (*Floveyor Internat., Ltd. v.*

Superior Court (1997) 59 Cal.App.4th 789, 795; Evid. Code, § 647.)

In seeking to set aside the default judgment, Park asserted in his moving declaration that he was not properly served by substitute service on February 20, 2014 because he had been an employee of CYR, but his employment ended on June 28, 2013, when he was terminated from employment, and following his termination, he was no longer welcome at CYR's premises. Therefore, according to Park, neither Lee nor anyone else at CYR was authorized to accept service of any documents on his behalf on February 20, 2014.

Park's claim that he was merely a former employee of CYR was controverted by National. Its opposition to Park's motion included the following: (1) CYR's license record from the USDA which listed Park as one of the two principals of CYR; (2) CYR's application to the USDA for a PACA license, which named Park as one of the two principals of CYR, with the title of "VP/CFO"; and (3) a vehicle registration record from the DMV showing that a CYR company van was registered to Park for the one-year period beginning August 20, 2013, which was months *after* the date that Park's employment purportedly was terminated.

It is settled that a judgment or order of the lower court is presumed correct, and that " '[a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent[.]' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Here, National's opposition papers provided substantial evidence to support the trial court's implied rejection of Park's claim that he was merely a former employee of CYR whose employment terminated months before the date of the substitute service upon Lee. The record supports the trial court's implied finding that, as

National contended, Park was duly served by substitute service on February 20, 2014, and that National thereby established personal jurisdiction over Park. Accordingly, the trial court properly refused to vacate the default judgment against Park on the ground it was void.[3]

2. *Park's arguments relating to PACA are meritless*.

Park further contends the default judgment is void and subject to attack because: (1) the assignment to National failed to include an assignment of PACA rights and therefore National lacked standing to sue under PACA; (2) the complaint failed to allege critical facts under PACA, i.e., that Park was a dealer who purchased perishable agricultural commodities with an invoice cost in excess of $230,000 in a calendar year, and who bought or sold produce in quantities of at least one ton per day (*Tomatoes*, *supra*, 214 Cal.App.4th at p. 324); and (3) at the time of the default prove-up, National failed to present evidence against Park with respect to those PACA requirements.

Leaving aside whether any of these arguments is cognizable on a motion to vacate a default judgment, an issue we do not reach, Park's arguments concerning PACA are an irrelevancy. Apart from the PACA claim, which was the fourth cause of action, National pled three other causes of action: common count—open book account; common count—goods sold and delivered; and account stated. In each of these, National pled that CYR, Lim and Park were agents, partners or alter egos

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[3] Having determined that the trial court properly found Park was served by substitute service on Lee on February 20, 2014, and therefore Park was not entitled to have the default judgment vacated as void, it is unnecessary to address National's argument that Park's motion to vacate the judgment was untimely.

of one another, that there was a "unity of interest and ownership between the corporate defendant[] and the individual defendants such that any individuality and separateness has ceased to exist, and that the corporate defendant[] [is] a mere shell, instrumentality, and conduit through which the individual defendants have performed the acts complained of," that they purchased wholesale produce from ETR, National's assignor, and became indebted to ETR in the net principal sum of $117,436.54. Park has failed to show that the first three causes of action are not well pled. A defendant's failure to answer the complaint admits the well-pleaded allegations of the complaint, and no further proof of liability is required. (§ 431.20; *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 281.) Because any one of the first three causes of action is sufficient to entitle National to a default judgment against Park in the principal sum of $117,436.54, Park's arguments concerning the PACA claim in the fourth cause of action require no discussion.

DISPOSITION

The September 22, 2017 order denying Park's motion to vacate the default judgment is affirmed. National shall recover its costs on appeal.

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EDMON, P. J.

We concur:

EGERTON, J.

HANASONO, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.